

REMARKS

Applicants' attorneys appreciate the courtesies extended to their representative, Stephan Filipek (Reg. No. 33,384) during the teleconference held on February 10, 2004 in which the claims of the present application were discussed in view of the cited art.

Claims 1, 12, 13, 18, 21 and 32-34 have been amended, claim 35 has been added, and claims 30 and 31 have been cancelled. Thus, claims 1-4, 6, 8-29, and 32-35 are pending in this application.

The sections set forth below are presented in the same order as that contained within the Action for ease of reference.

Informality Objections

Claims 21-29 were objected to for being informal. In particular, claim 21 apparently was viewed as being in an improper format for an independent claim. Although the applicants do not agree with this objection, for the sake of clarity only, claim 21 has been amended herein to facilitate prosecution. In particular, claim 21 has been amended along the lines discussed in the February 10, 2004 teleconference to recite a system for dispensing a product that includes at least one food package, a programmable tag and a dispenser. These changes are based on elements present in claim 1. No new matter has been added. Since claim 21 is now in independent form, withdrawal of the informality objection of claims 21-29 is respectfully requested.

Claim Rejections under 35 U.S.C. 102(b)

Claims 1, 2, 6, 9, 11-13, 21, 22 and 30 were rejected for allegedly being anticipated by Wright, U.S. Patent No. 5,285,041.

During the teleconference of February 10, 2004, the Examiner agreed that if certain clarifying amendments were made, the 35 U.S.C. 102(b) rejections would be withdrawn. Independent claims 1, 12 and 13 have thus have been amended accordingly, and claim 30 has been cancelled. In particular, claim 1 has been amended to make it clear that a programmable tag is associated with the product, and it is already clear that it includes machine-readable information in electronic form. Claims 12 and 13 have been amended to make it clear that the method includes encoding instructions in electronic form on a machine-readable tag. Independent claim 21 has also been amended, and includes a programmable tag. Support for these changes can be found, for example, in the application on page 8, line 19 to page 9, line 3. No new matter has been added.

As mentioned above, claims 30 and 31 have been cancelled. Consequently, dependent claims 32-34, which depended on claim 30, have been amended to directly or indirectly depend on claim 21. No new matter has been added.

In contrast to the invention as recited in claims 1, 12, 13 and 21, the Wright patent does not suggest or teach a programmable tag. In addition, Wright does not teach or suggest to program a tag at a manufacturing plant with either instructions or a verification code in electronic form as recited in claims 1, 12 and 13. Rather, Wright teaches to print a code on the outside of a food package. The vending system of Wright also requires a microwave oven having an interior cavity that is shaped to receive a correspondingly shaped food package. This enables the food package to be held in a specific orientation so that a code reader can locate and read the printed code (see col. 5, lines 10-26 and col. 6, lines 11-16 of Wright). Since a programmable tag is absent in Wright, and since Wright requires a printed code which is not the equivalent of electronic instructions or an electronic verification code, independent claims 1, 12, 13 and 21 are not anticipated.

Claims 2-4, 6, 8-11, 14-17 and 22 all directly or indirectly depend upon claims 1, 13 or 21, and thus these dependent claims also are not anticipated. Consequently, the applicants respectfully request withdrawal of the 35 U.S.C. 102(b) rejection.

Claim Rejections under 35 U.S.C. 103(a)

Claims 3, 24, 31 and 32 were rejected for allegedly being unpatentable over Wright in view of Masataka, Japanese publication no. 411230554. Claim 31 has been cancelled, and claim 32 has been amended to depend upon claim 21.

As explained above, Wright specifically teaches a microwave oven having a shaped cavity for use with a correspondingly shaped food package, and wherein the package includes a printed code in a predetermined position (for example, see claim 1, col. 9, lines 35-46 of Wright). The shaped cavity ensures that the printed code is lined up correctly for reading by a code reader when the package is inserted into the oven (see col. 5, lines 10-26 of Wright). Masataka teaches a cooking method that includes mounting a responder 2 on a package 1, placing the package 1 in an electronic oven 3, and then switching on a start button 5 to transmit a cooking procedure program to the oven (see page 2 of the English-language Abstract and Fig. 1). This method is intended for use by a person using a microwave oven in their home. Masataka therefore lacks a dispenser as it is not in the field of food vending systems. Thus, one skilled in the art would not combine Wright with Masataka as there is no teaching, suggestion or motivation to combine them.

Furthermore, even if Masataka and Wright were combined, the present invention would not be the result as neither reference, alone or in combination, teaches or suggests a programmable tag that is programmed at a manufacturing plant to include either instructions or a verification code for controlling either preparation of a food or beverage from the product in the dispenser or dispensing of the food or beverage from the dispenser, as recited in claim 1. In addition, neither reference teaches or suggests the system of claim 21 which includes a programmable tag and a dispenser adapted for reading the programmable tag and for preparing and dispensing a food or beverage from the package. Thus, at least for these reasons, independent claims 1 and 21 are patentably distinct from Wright and Masataka, taken either alone or in combination. Since claims 3, 24 and 31 depend, either directly or indirectly, on claim 1 or claim 21, they are patentably distinct for at least the same reasons. Thus, withdrawal of this 35 U.S.C. 103(a) rejection is respectfully requested.

Dependent claims 4, 10, 14-17 and 23 were rejected for allegedly being unpatentable over Wright. Regarding claims 4, 10 and 23, not only does Wright fail to disclose or suggest to affix a tag to an interior of a package, Wright teaches away from such a configuration. In particular, Wright teaches that the code is printed on upper surface of the lid of the tray package, or along one or both lateral sides (col. 6, lines 11-16). In a cylindrical package embodiment, Wright teaches to print the code on the outside surface of the package (col. 6, lines 29-32). The printed code is preferably a bar code (col. 7, lines 65-66), which can be read by a bar code reader. Bar code readers typically scan barcodes using laser-light transmitters and utilize light detectors, which both require line of sight to the bar code. In such cases, the bar code cannot be associated with the product inside the package, nor can it be located within the package because it would then be impossible for the bar code reader to read the bar code. Also, bar codes are not programmable. Thus, claims 4, 10 and 23 are patentably distinct from Wright. Furthermore, dependent claims 4, 10, 14-17 and 23 each depend from one of independent claims 1, 13 or 21 which are patentably distinct from Wright as explained above. Thus, these claims should be allowable for at least the same reasons. Thus, withdrawal of this 35 U.S.C. 103(a) rejection is respectfully requested.

Claims 18-20 and 25-29 were rejected for allegedly being unpatentable over Wright in view of Buckley et al. Claim 18 has been amended to clarify that the method includes sorting the information to determine consumption patterns for purposes of strategic market planning. Support for this change can be found, for example, on page 18, lines 19-21 of the application. No new matter has been added. Neither Wright or Buckley et al., alone or in combination, suggests or teaches such operation. Thus, claim 18 is patentably distinct thereover. Claims

19 and 20 depend on claim 18 and thus are allowable for at least the same reasons. Thus, withdrawal of the 35 U.S.C. 103(a) rejection of claims 19 and 20 is respectfully requested.

Claim 21 is patentably distinct from Wright as explained above. Buckley et al. also fails to teach or suggest system for dispensing a product that includes a programmable tag as recited in claim 21. Thus, claim 21 is patentably distinct from Wright and from Buckley et al., either taken alone or in combination. Thus, dependent claims 25-29 are patentably distinct for at least the same reasons, and withdrawal of the 35 U.S.C. 103(a) rejection of claims 25-29 is respectfully requested.

In view of the above amendments and remarks, the applicant respectfully requests withdrawal of all of the 35 U.S.C. 103(a) rejections.

New Claim 35

Claim 35 has been added and finds support in pending claim 1. In particular, claim 35 recites a food package that includes a receptacle and a programmable tag. The programmable tag is electronically programmed at a manufacturing plant to include at least one of instructions or a verification code for controlling the dispenser to prepare the food or beverage or to dispense the food or beverage. For the reasons set forth above concerning claim 1, claim 35 is believed to be patentably distinct from the cited art.

Conclusion

In view of the above amendments and remarks, the entire application is now in condition for allowance, early notice of which would be appreciated.

Respectfully submitted,

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